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SUBJECT: PURGE POLITICIZES VENEZUELAN PROSECUTORS

Classified By: POLITICAL COUNSELOR ABELARDO A. ARIAS FOR REASONS 1.4 (d
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Summary

1. (C) Venezuela's Attorney General's Office, under Isaias Rodriguez, has become a hierarchical and centralized organization, closely linked to the executive branch through Rodriguez's personal loyalty to President Hugo Chavez. Over 80 prosecutors have been fired in the last year, in alleged violation of the law. At the same time a small group of allegedly "political" prosecutors have had the lead on almost all the high profile prosecutions in the last year. The institutional deterioration of the Attorney General's Office has led to charges of politicization and ineffectiveness which call into question the organization's respect for human rights. End Summary.

Purge

2. (C) In the last year over 80 prosecutors have been fired from the Attorney General's Office, according to various sources. On March 18 the newspaper Quinto Dia published a list of 80 prosecutors who had been "removed, retired or substituted", reportedly taken from an internal document. Claudia Mujica, a former prosecutor who represents 25 prosecutors in wrongful dismissal cases, however, told poloff March 21 that 200 prosecutors had been fired in the last year. Former prosecutor Theresly Malave told poloff February 28 that the firings began in April 2004, with the dismissal, after a long disciplinary investigation, of herself and Americo Gloria. The firings continued, according to Malave, first targeting a group of 60 prosecutors who signed a letter calling on Attorney General Isaias Rodriguez to resign on April 12, 2002. Prosecutors who signed the presidential recall petition were the next target, she said, followed now by those who speak out against irregularities within the Attorney General's Office. Ramon Medina, former Director of Criminal Prosecution in the Attorney General's Office until resigning under pressure in March 2004, estimated that 75% of the prosecutors trained by the USG from 1999 to 2001 have been fired, or transferred to remote locations in the last year.

3. (C) The majority of the prosecutors have been fired with a simple letter, according to Mujica, allegedly in violation of the 1998 Organic Law of the Attorney General's Office. That law states that within a year of the law being passed a system was to be set up to tenure all prosecutors. Those with more than ten years experience could pass an alternative evaluation to achieve tenure. According to the law, until the exams and evaluations are organized, "those occupying such positions will continue in them." Sabino Montrane, former Director of the Attorney General's Office's Institute of Superior Studies, fired in October 2004, told poloff March 21 the exams were never organized. Former prosecutor Luis Gandica, who resigned after the Attorney General failed to protect him from threats from corrupt policemen, told poloff March 15 that Rodriguez believes that all prosecutors should serve at the pleasure of the Attorney General, and has interpreted the law to fit his model.

4. (C) Montrane said fired prosecutors are appealing their dismissals through the Administrative Courts system, but the cases are piling up because no judge dares rule that the fired prosecutors are right. Americo Gloria, told poloff March 22 that the 6th Administrative Court has ruled that the firings of the prosecutors are illegal, and that the prosecutors should be re-hired. The Attorney General's Office has appealed to the Administrative Appeals Court, however, which is taking 3-5 years to decide cases, and is politically loyal to President Chavez. Gloria said the judge reviewing his case was told that if he ruled in favor of Gloria, he would be replaced.

Betrayal and Loyalty

15. (C) Rodriguez's reorganization of the Attorney General's Office stems from the events of April 2002, and his belief that some prosecutors betrayed him by not defending President Hugo Chavez, according to Medina. The release of a letter by 60 prosecutors on April 12, 2002 and the active involvement of some prosecutors in arrests and searches on that day, changed Rodriguez's attitude. Malave said that Rodriguez called a meeting of 100 prosecutors on April 18 to accuse them of betraying him. According to Montrane, Rodriguez waited several months before beginning to take action against the prosecutors he considered disloyal, yet were among the most experienced and respected in the institution. Montrane estimated that 95% of prosecutors supported the opposition in 2002. Medina said that in December 2003 Rodriguez ordered an end to the system whereby new prosecutors were chosen on a competitive basis. According to Medina, Rodriguez asked him, prior to ending the system, "why do you always select the esqualidos (middle class) and opposition people?" Since then new prosecutors are chosen by Rodriguez alone, based on recommendations from members of the GOV, according to Medina, who complained that many of those hired cannot answer basic legal questions. Luis Diaz, fired on March 18, told poloff on March 22 that the situation became worse after the death of Danilo Anderson, November 18, when Rodriguez allegedly promised to rid the Attorney General's Office of traitors

Political Prosecutors or Opportunists?

16. (C) According to Diaz, a group of approximately 14 prosecutors now runs the Attorney General's Office, coordinated by Felix Mercadez. Diaz alleged that this group of "political prosecutors" decides personnel issues and case distributions. According to Diaz, most of the members of this group are using politics to increase their personal power, but would not be willing to take risks to defend the revolution. Medina called Mercadez a fixer, who is willing to carry out any order he is given, regardless of its legality. Medina said Rodriguez does not like to do the dirty work he is assigned by the GOV, and alleged that Mercadez has standing orders from Rodriguez to obey certain people outside the Attorney General's Office, including Ministers, who call with instructions.

17. (C) For Medina, opportunism motivates the "political prosecutors" who support Rodriguez. Medina alleged that political prosecutions begin with an announcement from Rodriguez targeting a certain person. Young prosecutors look at deceased prosecutor Danilo Anderson's rise to power and fame, Montrane asserted, and decide that putting themselves at the disposal of the GOV is a quick way to rise in the Attorney General's Office. Gandica charged that veteran prosecutors are being fired in favor of automatons who simply carry out Rodriguez's orders on political prosecutions. Gandica complained that these favored prosecutors have privileges which range from bonuses and body guards to direct access to Rodriguez's office. The favored prosecutors have no idea how to investigate a case, according to Gandica, but it doesn't matter because their cases are always assigned to equally political judges, who work with them to bring about the "correct" result.

Keeping Their Heads Down

18. (C) Montrane said "independent" prosecutors try to avoid trouble, and prosecute common street crime. They delay, and avoid cases that might bring trouble, such as drug cases that might involve FARC participation, or cases of corruption involving Chavez supporters. Gandica was still bitter about the lack of support he received after discovering a kidnapping ring in Bolivar State linked to high ranking police officials. Medina, whose wife still works in the Attorney General's office, described the situation inside the institution as horrible. Chavistas are now being fired as well, in a system where an accusation whispered in the correct ear can get anyone fired. Medina blamed a lack of management for the problem, as Directors and prosecutors spend more time defending themselves from attacks than doing E

their jobs. Medina said Rodriguez had rewarded those who would do the dirty work for him, and punished the independent leaders (like Medina) who were willing to tell him what was really going on in the institution. Prosecutors do not want to take chances, or make too big an effort to stick out, Medina said, lest they arouse suspicion or jealousy) either one of which can get you fired. Gloria and Diaz asserted that Rodriguez wants mediocre people because they are easier to control than competent and independent people.

Comment

19. (C) The changes in the Attorney General's Office have practically eliminated the concept of prosecutorial independence, while turning the institution into a reliable tool for political intimidation. Just by opening an investigation, prosecutors can threaten and intimidate a person with jail, house arrest, or travel restrictions, given the government's ability to link prosecutors with pliant judges. While manipulating the justice system, the GOV nonetheless hopes to mask its repression, by claiming a separate independent branch of government respects due process. The elimination of prosecutorial independence, the purging of experienced and independent prosecutors, and the rise to prominence of the opportunistic "political prosecutors", together with the increasing attacks against judicial independence, however, belies the existence of due process in Venezuela at this time.
Brownfield